Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-12

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Mr. Dean Scaletta** **[Text deleted], the Appellant, represented by [Appellant's representative]**
HEARING DATE:	**September 16th, 1997**
ISSUE(S):	**1. Whether Appellant entitled to extended gymnasium membership;** **2. Whether Appellant entitled to home care allowance.**
RELEVANT SECTIONS:	**Sections 131 and 138 of the MPIC Act and Sections 2 (Schedule A) and 10(1)(d)(iii) and 34 of Regulation 40/94**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

REASONS FOR DECISION

The Appellant, [text deleted] years of age at the time and employed as an Administrative Assistant at [text deleted], was involved in a motor vehicle accident on August 2nd of 1994. Her vehicle was struck on the left side by another vehicle, whose driver had run through a red light. She sustained ecchymosis of the left chest and abdomen, as well as injuries to the neck and lower back. Fortunately, none of her injuries appears to have been skeletal in nature; rather, it seems fairly clear that the injuries to her neck and lumbar regions should be classified as Class 2

whiplash associated disorder injuries, resulting in myofascial pain.

[The Appellant] was treated initially with non-steroid anti-inflammatory drugs, Tylenol 3, Amitriptyline and physiotherapy.

We do not believe that any useful purpose will be served by setting out a detailed medical history of the Appellant in these Reasons. It is sufficient to note that her neck pains and allied problems seem to have been resolved reasonably soon, but the same could not be said for her bilateral lower lumbar myofascial pain. For roughly a full week immediately following the accident [the Appellant] was in sufficient discomfort to preclude her return to work altogether; after that, she returned to work on a part-time basis until February 20th, 1995 when, largely out of the fear of losing her job, she returned to work full-time. Along with the physiotherapy that she received for the first six months after her accident, and, indeed, into the summer of 1995, [the Appellant] testified that she was following a regime of home exercises prescribed for her by her physician, [text deleted], doing them every morning. Contrary to normal expectations, however, she found that neither the physiotherapy nor the home exercises were achieving much benefit for her and so, in about mid-summer of 1995, she joined a [text deleted] gymnasium close to her place of work. Even that was not very successful, due primarily to a lack of skilled personnel.

In the month of May 1997 the Appellant enrolled at the [gym], where she has been attending three or four times a week, doing aquacizes, using a stationary bicycle with a special back support, and also walking around the track. Upon enrollment at the [gym] she was assessed by the resident physician and then had her exercise routines prescribed for her by a qualified instructor. The Appellant, herself, alleges that she has been feeling better during the last three

months than she had in the previous three years, and both she and her physician attribute this marked improvement to her regular attendances at the [gym]. [Appellant's doctor] notes that "as [the Appellant's] myofascial pain has been ongoing with chronic daily pain, good physical conditioning is very important and may need to continue indefinitely".

[The Appellant] had originally asked MPIC not only to pay for her membership at the gymnasium but, as well, to purchase a stationary bicycle for her home use, but since the [gym] has stationary bicycles available for her use there, she is no longer seeking the purchase of that equipment.

MPIC's Internal Review Officer, referring to Sections 138 of the MPIC Act and to Section 10(1) of Regulation 40/94, noted that the Corporation has discretion to take measures that it considers necessary to aid in the rehabilitation of an injured person. She therefore exercised that discretion and agreed that the Corporation should pay for one-half of [the Appellant's] gym membership for a period of one year from the original commencement date of that membership. Although [the Appellant] has been back working full-time since February of 1995 and seems now capable of doing just about everything that she needs to accomplish around her home, including the care of her [text deleted] year old son, we take note of [Appellant's doctor's] prognosis and are of the view that it would not be unreasonable to extend the Corporation's assistance to a full year of membership in the [gym]. Anything beyond that will, of course, have to be at [the Appellant's] own expense.

Turning, now, to the other facet of [the Appellant's] claim, which is for limited home care assistance in snow removal, we are faced with two hurdles: firstly, as was pointed out by MPIC's Internal Review Officer in her decision of December 30th, the provision of home care assistance is governed by Section 131 of the Act and Section 2, Schedule A of Regulation 40/94. That schedule sets out a form of grid system, allocating a certain number of points to each area of daily life that a victim is either wholly or partly incapable of performing by reason of injuries sustained in a motor vehicle accident. If the total number of points allocated as a result of completing that grid equals more than 4 out of a possible total of 27, then the victim becomes entitled to some compensation. The first problem that we face is that the regulation is completely silent on the whole question of outdoor chores such as grass cutting, general gardening and, more specifically in this case, snow removal. As a result, any victim who is unable to do any heavy lifting of the outdoor variety may be unable to earn points on the grid scale, and may well be precluded from home care assistance if that regulation is interpreted as providing an exhaustive list of disabilities.

We prefer to interpret Sections 131 and 138 (copies are annexed hereto) in a more liberal fashion, since the entire object of the statute is the rehabilitation of a victim and the lessening of disability resulting from bodily injury.

Having said that, however, we come to the second hurdle: we still need some medical evidence of the victim's inability to shovel snow. The Appellant seems, now, to be progressing very well towards a condition of full recovery which, once achieved, she should be able to sustain by regular attendances at the [gym]. With any good fortune, we should be quite a

few weeks away from the first snow fall and we are reluctant to order MPIC to assume the cost of snow removal, based upon the mere speculation that the work of snow removal might be something that [the Appellant] cannot undertake herself. Other than a handwritten note from [Appellant's doctor], dated July 10th, 1997, requesting the continuance of [the Appellant's] membership in the [gym], we have no other medical evidence before us more recent than October 29th, 1996. We are therefore obliged to decline the provision of home care service for snow removal purposes.

In summary, then, MPIC will be required to pay to the [gym], in order to renew [the Appellant's] membership for a further six months, the sum of $246.00 plus GST and PST of a further $34.44, for a total of $280.44. The Corporation has already paid the initial enrollment fee of $85.00 plus the first six months' membership fees.

Dated at Winnipeg this 18th day of September 1997.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED